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EXAMINER FLICK, JASON E				
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/674,758
Filing Date: September 30, 2003
Appellant(s): HARDISON, PAMELA

Thomas R. Williamson, III
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03/07/2011 appealing from the Office action mailed 07/07/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

- A) Claims 1-22 are pending in the application.
- B) Claim 21 is withdrawn from consideration.
- C) Claims 1-20 and 22 stand rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2005/0092789	Giacona	05-2005
6,128,709	Millen	10-2000
2004/0225181	Chu et al.	11-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 14, and 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 14, and 22 have been amended to indicate an upper and lower section which is uniform in diameter. Applicant's representative points to figures 1-2 and page 10, lines 15-16 for support. However, figures may not be used to show support for limitations relating to scale/relative size of elements (MPEP 2125). Furthermore, paragraph [0019] of applicant's disclosure specifically states that the drawings of the disclosure are not necessarily drawn to scale. In addition, the written portion of the disclosure (page 10, lines 15-16) cited by applicant's representative does not provide support for the amended claims. This portion of the disclosure (which supports limitations of claim 7) merely states the splice portion has "substantially the same diameter as the diameter of the length of material." This does not support the claim that the length of material, or the upper and lower portions for that matter, must be the same diameter throughout.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giacona, III (PGPub 2005/0092789), in view of Chu et al. (PGPub 2004/0225181).

[Claims 1-4, 6-8, and 14] Giacona, III teaches a device and method for retaining objects about a person (figure 1, item 10) (attaching an object to said lower section) (figures 1 and 2) comprising a length of material (a chain of linked elements) (figure 1, items 11 and 26) joined together so as to form an upper section (figure 1, item 11) and a lower section (figure 1, item 26), wherein said upper section is dimensioned to fit over a user's head (figure 2), and wherein a medical appliance is capable of being attached to said lower section (figures 3 and 4); further comprising a first (figure 1, item 28) and a

second end (figure 1, item 29) joined together by a smooth splice (figure 1, items 15 and 30; paragraph [0109]), thereby forming a continuous loop comprising a top section and a bottom section (figure 1), wherein said splice has a diameter and said length of material has a diameter, and wherein said splice diameter is approximately equal to said length of material diameter (figure 1). Giacona, III does not specifically state that the material forming the upper and lower sections is uniform in diameter. However, Chu teaches a support apparatus comprising upper and lower sections wherein the material is uniform in diameter (figure 3, item 16; paragraph [0035]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the structure taught by Giacona, III, with the use of a uniform length of material, as taught by Chu, in order to increase ease of use, as well as to allow for easier adjustment of attachments across all length of the material.

[Claims 9-11 and 15-17] Giacona, III and Chu teach the limitations of claims 8 and 14, upon which claims 9-11 and 15-17 depend. In addition, Giacona, III discloses a bottom section comprising at least two segments of said length of material gathered together which lie proximate and parallel to one another (figure 1).

[Claims 12, 13, 18 and 19] Giacona, III and Chu teach the limitations of claims 9 and 16, upon which claims 12, 13, 18, and 19 depend. Giacona, III further teaches at least one clasp for securing the at least two segments together (figure 1, item 36).

[Claim 5] Giacona, III and Chu teach the limitations of claim 1, upon which claim 5 depends. In addition, Chu discloses the length of material may be formed from nylon (paragraph [0036]).

Claims 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giacona, III (PGPub 2005/0092789), in view of Chu et al. (PGPub 2004/0225181), in further view of Millen (USPN 6,129,709).

[Claim 20] Giacona, III and Chu teach the method steps of claim 14, upon which claim 20 depends. Although Giacona, III teaches attaching an article through the bottom loop of the support apparatus, Giacona, III does not specifically disclose pinning the object to the lower portion via at least one safety pin. However, Millen teaches a suspension apparatus for supporting medical devices wherein medical appliances are attached via at least one safety pin (figures 1a and 2, item 150; column 3, lines 54-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the structure taught by Giacona, III and Chu, with the use of safety pins, as taught by Millen, in order to provide an alternative means of attaching items to the supporting structure.

[Claim 22] Giacona, III teaches a device and method for retaining objects about a person (figure 1, item 10) comprising a length of material joined together (figure 1, items 11 and 26) forming a spliced loop (figure 1, items 15 and 30; paragraph [0109]), said spliced loop further comprising at least two segments of said length of material, wherein said at least two segments lie proximate and parallel one another (figure 1), wherein said length of material has first end (figure 1, item 28) and second end (figure 1, item 29). Giacona, III does not specifically state that the material forming the upper and lower sections is uniform in diameter. However, Chu teaches a support apparatus

comprising upper and lower sections wherein the material is uniform in diameter (figure 3, item 16; paragraph [0035]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the structure taught by Giacona, III, with the use of a uniform length of material, as taught by Chu, in order to increase ease of use, as well as to allow for easier adjustment of attachments across all length of the material. Although Giacona, III teaches attaching an article through the bottom loop of the support apparatus, Giacona, III does not specifically disclose at least one fastener for attaching items to the first and second end. However, Millen teaches a suspension apparatus for supporting medical devices wherein medical appliances are attached via at least one fastener (figures 1a and 2, item 150; column 3, lines 54-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the structure taught by Giacona, III and Chu, with the use of fasteners, as taught by Millen, in order to provide an alternative means of attaching items to the supporting structure.

(10) Response to Argument

1. *Arguments in regards to the 35 U.S.C. 112, first paragraph, rejection of claims 1, 14, and 22 as failing to comply with the written description requirement.*

Regarding **claims 1, 14, and 22**, the Appellant argues the amendments made on 04/06/2010 are supported by the original specification. These amendments indicate an upper and lower section which is uniform in diameter throughout the upper and lower section. The examiner respectfully disagrees. The Appellant points to figures 1 and 2 for support. However, figures may not be used to show support for limitations relating to

scale/relative size of elements (MPEP 2125). Furthermore, paragraph [0019] of the Appellant's disclosure specifically states that the drawings of the disclosure are not necessarily drawn to scale. The Appellant has also pointed to page 9, lines 18-20 and page 10, lines 14-16, in the specification for support of these amendments. These portions of the specification do not disclose that the length of material 20 has only one diameter. These sections of the disclosure (which supports limitations of claim 7) merely states the splice portion has "substantially the same diameter as the diameter of the length of material." This does not support the claim that the length of material, or the upper and lower portions for that matter, must be the same diameter throughout. There is no such disclosure to that effect; thereby allowing for the length of material to have multiple diameters. Furthermore, paragraph [0024] of the specification states "the invention is preferably a soft flexible length of material, such as for exemplary purposes only, a rope, string, cord, tube, **or chain.**" The examiner notes that a **length of material formed of a chain** would not have a uniform diameter throughout the entire length of material (this limitation is specifically recited within claim 6). In this light, the specification only discloses that the diameter of the splice is substantially the same (although not required to be exactly the same) as a length of material which is capable of having multiple diameters. Based upon the originally filed specification, the Appellant's argument regarding the inherency of a uniform diameter is unconvincing.

2. Arguments in regards to the 35 U.S.C. 103(a) rejection of claims 1-19 as being unpatentable over Giacona, III, in view of Chu et al. and claims 20 and 22 as being unpatentable over Giacona, III, in view of Chu et al., in further view of Millen.

Regarding **claims 1-20 and 22**, the Appellant argues Chu does not qualify as a reference based upon the Appellant's filing of declarations pursuant to 37 CFR 1.131 and 37 CFR 1.132. The examiner notes these declarations are not formally entered, and thus, have not been considered by the examiner. The Appellant has not shown or demonstrated any valid reason why these declarations were not filed earlier in prosecution, prior to the filing of an Appeal Brief. See 37 CFR 41.33(d)(2). See Advisory Action in response to the reply filed 07 March 2011. Therefore, Chu is considered to be a legitimate prior art reference.

In addition, the Appellant states Chu does not teach a support apparatus comprising upper and lower sections wherein the material is uniform in diameter. Once again, the examiner respectfully disagrees. As previously stated during prosecution, lacking any specific definitions of a particular word or phrase within the disclosure, the examiner has the obligation to give claim elements the broadest reasonable interpretation with regards to the prior art. The Appellant's argument appears to rely on a narrowed definition of a circular diameter. However, the definition of a "diameter" (for example, as taught by Merriam-Webster's online dictionary) is merely the length of a straight line through the center of an object. In this light, a diameter is not defined only within circular structures. Furthermore, the examiner notes there is no recitation within the claim language indicating a requirement for a length of material with a circular cross-

section. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As previously stated by the examiner, Chu clearly teaches the recited claim limitations.

The Appellant also makes arguments relative to dependent claim 7. Specifically, the Appellant asserts Giacona, III does not teach a splice diameter which is "**approximately** equal to" the diameter of the length of material. The examiner respectfully disagrees. As stated in the standing rejection and clearly shown within figure 1 of Giacona, III, the prior art teaches the recited claim limitations. Once again, the Appellant's argument relies upon features of the instant invention which do not appear within the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Specifically, the examiner notes the fact that the claim limitation "**approximately** equal to" does not require the diameter of the splice and the length of material to be **exactly** equal. In this light, the prior art to Giacona, III clearly meets the recited claim limitations.

Therefore, given the rejection and arguments presented above, the examiner asserts that the prior art to Giacona, III, Chu, and Millen teaches all elements of claims 1-20 and 22 and these elements satisfy all structural, functional, operational, and spatial limitations currently in the claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/JASON FLICK/
Examiner, Art Unit 3763

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/Nicholas D Lucchesi/

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